



**US Army Corps  
of Engineers®**

# Corps Points!

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*A weekly compendium of facts and talking points to help leaders tell the Corps story.*

## **WEEKLY FOCUS: -- Regulatory Program**

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions.

- The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands.
- Corps permits are required for any work, including construction and dredging, in the Nation's navigable waters.

The majority of the Corps' regulatory program falls under the authority of two laws:

**The Rivers and Harbors Acts of 1890 and 1899** establish permit requirements to prevent unauthorized obstruction or alteration of any navigable water of the United States. The most frequently exercised authority is contained in **Section 10** which covers construction, excavation, or deposition of materials in, over, or under such waters, or any work which would affect the course, location, condition, or capacity of those waters. The authority is granted to the Secretary of the Army.

**The Federal Water Pollution Control Act, more commonly known as the "Clean Water Act,"** under **Section 404**, directs the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into waters of the United States at specified disposal sites.

Determining which areas qualify for protection as wetlands is a major aspect of the program, and the Corps' Wetlands Delineation Manual is the federal manual for identifying and delineating wetlands.

In making decision about whether to issue permits, district commanders consider all aspects of the public interest, including economic development and environmental protection. The Corps only issues permits for work in wetlands after evaluating applications with the intent of avoiding, minimizing and then mitigating for wetlands losses.

- More than 60,000 acres of wetlands are restored, created, enhanced or preserved by the Corps every year.
- Nearly 90,000 important development and renovation projects are permitted every year with little or no impact.
- On average permit decisions are made within 32 days.

Recently, the Corps and the Environmental Protection Agency issued regulatory guidance for wetlands mitigation after extensive coordination with other federal agencies.

- The guidance affirms the national goal of no net loss of wetlands. The guidance is responsive to recent NRC/NAS reports and is intended to improve mitigation for wetlands impacts in permit actions.
- The guidance focuses on taking a watershed approach to mitigation and requires it in the context of the watershed's ecological needs. This will ensure protection of wetlands and other aquatic areas established as mitigation.
- The guidance contains a comprehensive action plan enabling the Corps and other agencies to make better decisions about when and how to restore and enhance wetlands, improve the ability to measure and evaluate the success of these restoration efforts, and expand the ability to track wetland restoration progress into the future.

Most Federal case law since 1972 has confirmed Clean Water Act jurisdiction over the full tributary systems to navigable and interstate waters and over all wetlands adjacent to such waters. The Corps and EPA expect to provide additional clarification on jurisdictional issues through joint rulemaking.

In a 2001 ruling (SWANCC), the Supreme Court held that the Corps had exceeded its Clean Water Act regulatory authority in asserting jurisdiction over certain intrastate, isolated, non-navigable ponds based on their use as habitat under the Migratory Bird Rule.

- The SWANCC decision removed those isolated aquatic areas from Clean Water Act jurisdiction in situations where the sole basis for asserting jurisdiction was the actual or potential use of these areas as migratory bird habitat.
- The decision did not invalidate other parts of Corps and EPA regulations asserting Clean Water Act jurisdiction over interstate and navigable waters and their tributaries and wetlands adjacent to these waters.
- Prior to the decision, 15 states had programs in place that provided some level of protection for isolated waters. As a result of the decision, the states and tribes will take on an increasingly important role in providing protection for such water bodies. EPA will place increasing importance in working with state and tribal partners through its various programs.